

WESTERN DIVISION
NO. 5:06-CR-84-BO
NO. 5:12-CV-447-BO

BRANDON NEVILLE SMITH,
Petitioner,

v.

UNITED STATES OF AMERICA,
Respondent.

This matter is before the Court on petitioner’s motion to vacate, set aside, or correct sentence pursuant to 28 U.S.C. § 2255 [DE 34]. Petitioner, Mr. Smith, asserts that he is not guilty of having been a felon in possession of a firearm in violation of 18 U.S.C. § 922(g) in light of the Fourth Circuit’s holding in *United States v. Simmons*, 649 F.3d 237 (4th Cir. 2011) (en banc).

The government has responded to Mr. Smith's § 2255 petition, stating that it waives its reliance on the statute-of-limitations defense and asking that the Court reach the merits of Mr. Smith's claim [DE 40]. Furthermore, the government concedes that Mr. Smith's claim has merit and asks the Court to vacate Mr. Smith's sentence.

In light of the foregoing and the hearing held in this matter on September 20, 2012, the Court accepts the government's concession and allows Mr. Smith's § 2255 motion. Accordingly, Mr. Smith's motion to vacate is GRANTED. The judgment and conviction entered in this matter on January 23, 2007, is hereby VACATED and Mr. Smith is ORDERED to be released from federal custody forthwith.

SO ORDERED, this 70 day of September, 2012.

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